

Opinion No. 98-002

Mr. Chris Bradley, Budget Manager
Maricopa County Office of Management and Budget
301 W. Jefferson
Phoenix, Arizona 85003

January 5, 1998

SYLLABUS:

The Board of Supervisors has the legal authority to appoint the Sheriff as the County Director of Emergency Services. If the Sheriff is so appointed, the Board of Supervisors will be obligated to amend the Emergency Operations Plan to reflect those changes necessitated by the appointment of the Sheriff.

Dear Mr. Bradley:

You have asked the following questions concerning responsibility for emergency services:

- 1) Can the Board of Supervisors legally delegate its responsibilities for emergency management to the Sheriff?
- 2) If the Board can legally delegate its responsibilities to the Sheriff, what course of action would be required or advisable to effectuate the transfer and provide assurance to the Board that the responsibilities will be met?

As to question number one, the Board of Supervisors may not delegate its responsibilities to provide emergency services but may appoint the Sheriff as the Director of Emergency Services. This issue was addressed in Arizona Attorney General Opinion No. 188-025. Since a “delegation of authority” would necessarily require statutory authorization, the Attorney General Opinion was confined to the question of appointing the Sheriff as Director of Emergency Services and the resolution of the duties of both offices. The Opinion concludes that absent circumstances that may cause an incompatibility between the duties of the Sheriff and Director of Emergency Services, the Board of Supervisors has the authority to appoint the Sheriff to that position.

The Attorney General Opinion outlines the relationship between the Board of Supervisors and the Sheriff with regard to Emergency Services. The opinion delineates the Sheriff’s responsibilities with regard to emergency functions as described at A.R.S. § 26-301, and distinguishes these matters from the powers of the Sheriff as provided in A.R.S. § 11-441. While the opinion concludes there is no inherent conflict between the duties of the Sheriff and those of the Director of Emergency Services, the Attorney General points out that the ultimate responsibility for Emergency Services rests with the Board of

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Supervisors, thus affirming the inability of the Board of Supervisors to “delegate” responsibility in this area.

[T]he board of supervisors has no authority to control and direct any aspect of a sheriff’s execution of his statutory duties as sheriff. (Citations omitted.) Therefore, the Board may not direct the sheriff to accept the appointment as director of emergency services. Furthermore, the Board’s direction and control of a director of emergency services pursuant to A.R.S. § 26-308(C), when that director is also a sheriff, would be restricted to direction and control of activities which are exclusively duties of the director and not statutory duties of the sheriff.

Ariz. Atty. Gen. Op. No. 188-025, 43 n.1

In view of the discussion above, your second question is amended to ask the appropriate procedure for the appointment of the Sheriff as the Director of Emergency Services. A.R.S. §§ 26-307 and 26-308 identify the powers of the County in cases of state or local emergencies. Both statutes require the adoption of emergency plans. For example, A.R.S. § 26-307(B) provides in pertinent part:

Any order, rule or regulation issued by the governing body of a county or other political subdivision of the state is effective when a copy is filed in the office of the clerk of the political subdivision.

Similarly, in A.R.S. § 26-308(D):

State emergency plans shall be in effect in each such political subdivision of the state. The governing body of each such political subdivision shall take such action as is necessary to carry out the provisions thereof, including the development of additional emergency plans for the political subdivision in support of the state emergency plans.

This office has reviewed the existing Emergency Operation Plan approved by the Board of Supervisors on March 1, 1995. This current plan should be modified to reflect the

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appointment of the Sheriff as the Director of Emergency Services.¹ In any event the current plan and any future plan must expressly recognize that the statutory responsibility for emergency services remains with the Board of Supervisors. A.R.S. § 26-308(C) provides:

The chief executive officer or governing body of each county, incorporated city or incorporated town may appoint a director who shall be responsible for the organization, administration and operation of local emergency management programs, subject to the direction and control of such executive officer or governing body.

The Board of Supervisors may not delegate its authority in matters of emergency services. The Board of Supervisors may appoint the Sheriff as the Director of Emergency Services as provided by law. The Board of Supervisors will be obligated to adopt a revised Emergency Operation Plan which specifies the responsibility of all County offices and departments in matters of emergency services.

Very truly yours,

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY
DIVISION OF COUNTY COUNSEL

Dean M. Wolcott
Deputy County Attorney

DMW:tm
Approved by the Opinion Review
Committee of the Maricopa County
Attorney's Office this 5th day of
January 1998.

Request No. 97-OMB 24

¹This office was also provided a copy of a proposed revision to the current plan which essentially substituted the Sheriff into the position occupied by the County Administrative Office insofar as emergency services are concerned. This particular proposal cannot be approved at this time as this office will recommend a number of technical changes in the event that the Board of Supervisors agrees to appoint the Sheriff as the Director of Emergency Services.